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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
End User Common Line Charges	)	CC Docket No. 95-72
	)	

TO: The Commission

JOINT PETITION FOR RECONSIDERATION

KLP, Inc. d/b/a Call-America ("Call-America") and Yavapai Telephone Exchange, Inc. ("YTE"), pursuant to 47 U.S.C. § 405 and 47 C.F.R. § 1.429, hereby petition the FCC to reconsider its First Report and Order (FCC 97-158) ["First Report"] released on May 16, 1997 in the above-captioned proceedings. Call-America and YTE seek reconsideration of the FCC's decisions:

- establishing a presubscribed interexchange carrier charge ("PICC");
- increasing the tandem switching charge on a net basis by approximately 400% through a reallocation of revenues currently recovered through the transport interconnection charge ("TIC");
- abolishing the unitary rate structure for tandem-switched transport users in favor of the three-part rate structure.

Reconsideration of these aspects of the First Report is appropriate because the FCC's decision will cause significant increases in the long distance rates of rural and small business subscribers which do not reflect the costs of serving those customers, and will reduce the number of long distance carriers willing and able to serve rural and small business customers.

I. STATEMENT OF INTEREST

Call-America is a small interexchange carrier ("IXC") headquartered in Mesa, Arizona. Founded in 1982, Call-America provides direct-dial long distance service to residential customers and small to medium sized businesses in the Phoenix and Tucson metropolitan areas and throughout Arizona. Call-America has fewer than 50 employees and annual toll revenues of less than $10 million.

YTE was established in 1984 in the small rural community of Prescott, Arizona. It serves primarily rural communities in the Northern Arizona area, with populations ranging from 500 to 25,000 people. YTE provides service to small businesses, residential callers and government entities, and has annual revenues of less than $2 million.

II. THE MULTILINE BUSINESS PICC.

A. BACKGROUND.

The First Report required ILECs to impose on long distance carriers a multi-line business PICC of $2.75/line per month. The multi-line business PICC is not necessary to compensate ILECs for the local loop costs caused by those customers; the multi-line business SLC will fully compensate ILECs for those costs. Id. at ¶¶ 39, 77. Instead, the FCC established the multiline business PICC of $2.75/line due to its desire to avoid raising the SLC for residential and single-line business subscribers. Id. at ¶ 73. The FCC recognized that its rule will require multi-line customers to contribute toward the cost of serving single-line customers, but justified this new subsidy as "a reasonable measure to avoid an adverse impact on residential customers." Id. at ¶ 101. It is clear from the First

Report and its Regulatory Flexibility Analysis that in seeking to avoid an "adverse impact" on residential customers, the FCC wholly ignored the devastating negative impact its decision would have upon small business customers and interexchange competition in the small business market.

B. THE PICC WILL DEVASTATE CARRIERS SUCH AS CALL-AMERICA AND YTE

The net impact of the PICC on Call-America and YTE is alarming. The new access structure attributed to PICC would result in a **90% switched access increase**, nearly **doubling** the amount of access Call-America currently pays. YTE's access costs will skyrocket **nearly 500 percent.**[1] To summarize this impact in another way, Call-America would see an immediate increase in its access costs, from 2.3 cents per minute of usage to nearly 4.3 cents per minute. YTE's costs would increase nearly five-fold.

To put these figures in context, the Commission should understand that Call-America's net profit is a mere **one half cent per minute of usage**. With such small margins, Call-America cannot stay in business if it absorbs the new PICC; thus, if it is to have any hope of continued service to the residential and small business market, Call-America must pass the entire PICC on to its customers.

Call-America and YTE will experience these dramatic increases for one simple reason: they serve customer bases composed predominantly of small business subscribers. By contrast, their competitors who ignore small business customers, or for whom the small business market is only a small portion of its revenues, will experience a less severe impact.

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[1] Other small carriers also serving exclusively or primarily rural markets may experience even greater negative impacts.

The carriers who may actually see a positive net impact are those who serve as wholesale providers (and therefore do not pay the PICC for a significant percentage of their traffic). In other words, Call-America's supplier of service may experience a net decrease in access attributed to the PICC, while Call-America would be forced to either go out of business or to pass the increases it will experience on to its customers. Notably, by making the PICC for multi-line businesses much higher than the residential PICC, the FCC has placed small interexchange carriers like Call-America and YTE at a severe competitive disadvantage *vis a vis* other interexchange carriers. If this order is allowed to be implemented, interexchange carriers may refuse to provide service to small business with low average usage per line, thus creating a stranded market segment.

C. THE PICC WILL HARM SMALL BUSINESSES

A typical small business customer will almost always have at least one fax line plus two or three incoming local lines. Often small companies will have ten, twenty or more lines to accommodate incoming local calls, while only placing an occasional long distance call. As a result, customers such as these typically have very low average usage per line. Call-America and YTE primarily serve customers such as these.

Attachment A contains a chart illustrating the PICC impact on twelve actual Call-America customers. This attachment assumes that Call-America can successfully pass the PICC charges through to its end user, which is a dubious assumption given that Call-America competes against a number of larger carriers that may not immediately pass the PICC along to their customers. As illustrated, the impact on many small business will <u>also</u> be quite adverse, resulting in significantly increased costs depending on the number of presubscribed lines and the average usage per line.

However, in rural areas, such as YTE's primary service areas, Section 254(g) of the Act likely will prevent carriers from passing any PICC increases through to its rural customers. Section 254(g) mandates that, "the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to subscribers in urban areas." 47 U.S.C. § 254(g). Since the majority of YTE's business is derived from small businesses in rural Arizona, but it also serves the metropolitan area of Phoenix, Section 254 effectively will prevent YTE from passing the PICC increase along to <u>any</u> of its customers. Constrained by the competitive market in Phoenix, YTE most certainly will not be able to pass through the PICC cost to these customers. Because YTE's rates for its rural subscribers may be "no higher" than its urban rates, this will mean that YTE also is prohibited from passing such increases along to its rural subscribers. Accordingly, the FCC and its <u>First Report</u> in effect have mandated that YTE absorb all of the PICC charges for its Arizona customers (or that it exit the Phoenix market). Such absorption will result in an estimated $1.4 million net loss for YTE, which would equal almost ten cents per minute of traffic it carries. YTE cannot survive under these conditions.

To the extent that PICC increases creates an incentive for carriers to avoid serving the unprofitable small businesses or if an end user customer chooses not to select a presubscribed carrier, LECs are permitted to assess the full PICC directly on the end user at the beginning of each billing cycle. The impact of the PICC is unavoidable by the end user if not assimilated by the service provider. The PICC will create an artificially skewed market which assesses costs (which are not cost-based) upon certain small businesses in a discriminatory fashion.

D. APPLICATION OF THE PICC IS DISCRIMINATORY

Apart from the impact of the PICC upon long distance rates for small business subscribers, the FCC's decision is unreasonable because its impact on interexchange competition would be disproportionate to the duration and benefits of the subsidy. Many smaller interexchange carriers, like Call-America and YTE, entered the market by focusing primarily upon the small business customer as a niche market. Unlike their larger competitors, Call-America and YTE do not have the operating margins or capital reserves to withstand the devastating impact of the FCC's decision upon their bottom line.

Larger carriers, however, have the operating margins and capital reserves to wait for some period before raising small business rates. During that interval, a substantial portion of small business customers could react to rate increases from smaller carriers by migrating to larger carriers in the (ultimately futile) pursuit of lower rates. Call-America and YTE will be vulnerable to losing a significant portion of their customer bases to larger carriers who have the operating margins and capital reserves to forgo immediate rate changes for an indefinite time period in an attempt to win the competitor's small business subscribers.

Given the historic sensitivity of the small business sector to small price differences among carriers, the speed and scope of the potential migration should not be underestimated. As they lose small business customers to their larger competitors, many small carriers will be placed in a negative cash position and forced to exit the market. Call-America and YTE may not last in the market to see if and when the multi-line business PICC actually decreases to $1.00/line or below, as the FCC has predicted. The unfortunate result of the FCC's decision will be less competition among carriers and fewer carrier choices without any escape from higher rates. Simply stated, there are three choices for Call-

America or YTE: 1) go out of business, or 2) sell out to a larger carrier who can withstand the rate increase or 3) pass the PICC charges on to the customer.

In addition, the FCC's decision to build new cross-subsidies into the interstate access charge regime, solely to lower the SLCs paid by residential subscribers, is contrary to the statutory requirement that universal service subsidies must be "explicit." 47 U.S.C. § 254(e). While it may be true that the FCC is not required to remove all *existing* cross-subsidies immediately (First Report at ¶ 9), to create a *new* implicit subsidy clearly violates both the letter and spirit of Section 254(e).

E. IMPOSITION OF THE MULTI-LINE PICC WILL RESULT IN THE ABANDONMENT OF MANY SMALL AND RURAL MARKETS.

Unfortunately, the multiline business PICC could wipe out entire market segments. Non-cost based prices, which discriminate among certain classes of customers will undermine efficient interexchange market conditions and create uneconomic distortions among various telecommunications service providers and end user subscribers. In fact, the FCC's Order will send uneconomic signals to long distance carriers to avoid entering rural and other high cost markets and the result will be the denial of customers who are unprofitable.

III. THE MULTI-LINE BUSINESS PICC IS AN IMPERMISSIBLE MARKET ENTRY BARRIER

The Telecommunications Act of 1996 requires that the FCC "identify and eliminate, by regulations pursuant to this Act..., market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications service. 47 U.S.C. 257(b). By establishing the PICC, the FCC has created a market entry barrier which is unlawful and which discriminates against small entrepreneurs and other small business, like Call-America and YTE. (Both Call-America and YTE are independently owned businesses that employ fewer than 50 individuals).

The FCC has created (inadvertently, we believe) an entry barrier in the provision of interexchange telecommunications services. By forcing multi-line business customers to pay uneconomic rates, the First Report eliminates the market that Call-America and YTE have operated in since the early 1980s. This could force Call-America and YTE to withdraw from the market, and presents a barrier to entry by other carriers wishing to follow Call-America and YTE's lead to serve the small and rural areas served by them. Thus, this new barrier to entry will force many small Tier III interexchange carriers out of the competitive marketplace, resulting in higher prices and fewer choices for the customers they now serve.

IV. THE FCC SHOULD REINSTATE THE CURRENT PRICING RULE FOR TANDEM SWITCHING AND RETAIN THE UNITARY RATE STRUCTURE FOR TANDEM-SWITCHED TRANSPORT

Call America and YTE are small carriers who depend upon tandem-switched transport to serve their long distance customers in rural areas. They are particularly sensitive to mileage charges due to the often long distances between ILEC end offices and tandem locations. In our experience, the ILECs have not constructed their interoffice transport networks, and their tandem topography in particular, to route interstate access traffic efficiently. The FCC has adopted several new transport rules which will have a severe negative impact upon our ability to serve rural customers at affordable rates. In particular, Call America and YTE request that the FCC reinstate its pre-existing pricing rule on tandem switching, and continue to permit long distance carriers to obtain tandem-switched routing pursuant to a unitary rate option.

The FCC's decision to recover almost 100% of the tandem revenue requirement from the tandem switching charge will increase our transport costs by approximately 400%. We cannot sustain that kind of an access cost increase. We will have no choice but to pass that cost increase through to our customers in the form of higher rates on January 1, 1998. By doing so, we run the risk that our customer base will migrate to larger long distance carriers who have the ability to wait for some period of time before they flow through these access costs to their customers. The FCC has previously conceded that the tandem revenue requirement does not reflect actual tandem switching costs. It stated: "The . . . transport revenue requirement is too large to reflect any reasonable estimate of tandem switching costs." Brief for FCC, Competitive Telecommunications Ass'n v. FCC, Nos. 95-1168 & 1170, filed Dec. 14, 1995, at p. 25. The FCC should repeal the new tandem switching pricing rule immediately.

The FCC also should restore the unitary pricing option, which is the preferred pricing option for long distance carriers who depend upon tandem-switched transport. Forcing small carriers to purchase tandem-switched transport under a three-part rate structure will place those carriers at the mercy of the ILECs' tandem deployment decisions. In particular, Call America and YTE will be forced to pay higher mileage costs due solely to the ILECs' decisions over how to construct their interoffice networks to serve rural areas. Discarding the unitary pricing option also would be discriminatory, since the FCC plans to continue permitting direct-trunked users to use a unitary pricing option even when they route traffic through tandem locations. The FCC should permit all users of tandem routing to have the same rate structure. Certainly, there is no arguable basis in cost-causation principles to distinguish between direct-trunked and tandem-switched users when both route their traffic over the same facilities for the same distance through the tandem location.

Conclusion

For the foregoing reasons, Call-America and YTE urge the Commission to reconsider its decision to impose a PICC on multi-line business lines and to reconsider its tandem-switched transport rate structure.

Respectfully submitted,

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ATTACHMENT A

Customer	Toll Amount	Toll Minutes	Cost Per Minute	Customer Lines	PICC @ 2.75 Per Line $	Toll Plus PICC Chg	Effective CPM	Percent Increase
A	$19	153	$0	79	$217	$236	$2	1169.90%
B	$49	329	$0	49	$135	$184	$1	275.00%
C	$26	211	$0	26	$72	$98	$0	275.00%
D	$185	1623	$0	74	$204	$389	$0	110.00%
E	$260	2200	$0	87	$239	$499	$0	92.08%
F	$119	888	$0	19	$52	$171	$0	44.08%
G	$71	648	$0	9	$25	$96	$0	34.67%
H	$424	3563	$0	51	$140	$564	$0	33.12%
I	$27	205	$0	3	$8	$35	$0	30.93%
J	$69	574	$0	5	$14	$83	$0	19.98%
K	$317	2884	$0	23	$63	$380	$0	19.94%
L	$151	1179	$0	6	$17	$168	$0	10.91%